

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

109

CR-7632-2023 (O&M)
Date of decision : 30.08.2024

Tara Chand Yadav

..... Petitioner

versus

Saroj and others

..... Respondents

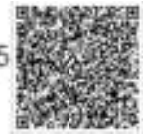
CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Munish Gulati, Advocate
for the petitioner.

PANKAJ JAIN, J. (Oral)

1. This is a revision petition directed against order dated 18.08.2023 passed by Civil Judge (Jr. Divn.), Gurugram whereby application filed by the petitioner under Order 7 Rule 11 Code of Civil Procedure stands dismissed.

2. Plaintiff filed suit seeking decree of declaration to the effect that she is owner and is entitled to possess half share of suit property and the defendants do not have sole right, title or interest in the same. Further decree of declaration was sought with respect to sale deed bearing vasika No.23588 dated 03.03.2023 registered at Wazirabad, Tehsil and District Gurugram claiming that the same was result of fraud. Further prayer was for grant of decree of permanent injunction restraining defendants including the present petitioner and his associates/agents from selling, alienating or creating any third party right or interest in the suit property. Claim of the plaintiff was based upon the fact that she also contributed to the purchase of the



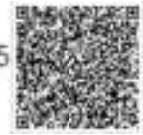
property and there was MOU signed between her and the defendant. Thus, she being full partner was entitled to possess the property. An application was filed by the present petitioner seeking rejection of the plaint claiming that the same was barred under the provisions of Prohibition of Benami Property Transactions Act, 1988 and that of Income-tax Act as plaintiff claimed cash transactions.

3. Trial Court dismissed the suit holding that the case pleaded by the petitioner seeking rejection of plaint does not fall within the parameters of Order 7 Rule 11 and there is no bar under law to bring the suit. So far as cash transactions are concerned, there may be an offence under the Income-tax Act, but that does not bar the plaintiff from filing the suit.

4. Counsel for the petitioner while attacking the impugned order submits that the petitioner has been wrongly dragged into the *lis*. However, he is not in a position to dispute that the petitioner who is defendant No.2 cannot claim that he has no connection with the suit property. So far as law with respect to Order 7 Rule 11 is concerned, the same has been elaborately laid down by Supreme Court in ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) through LRs & ors., 2020 INSC 450*** which has been further reiterated in ***Geetha, D/o Late Krishna & Ors. vs. Nanjundaswamy & Ors. 2023 INSC 964***, holding as under:-

“xx xx xx

6. Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, CPC and the precedents on the subject. The relevant principles have been succinctly explained in a



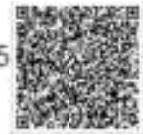
recent decision of this Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali* as follows:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily



without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

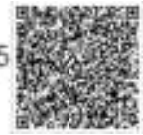
23.6. *Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

....

23.9. *In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v.*



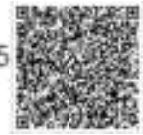
M.V. Sea Success 1, (2004) 9 SCC 512] which reads as: (SCC p. 562, para 139)

"139. Whether a complaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the complaint itself. For the said purpose, the averments made in the complaint in their entirety must be held to be correct. The test is as to whether if the averments made in the complaint are taken to be correct in their entirety, a decree would be passed."

23.12. In Hardeh Ores (P) Ltd. v. Hede& Co. [Hardeh Ores (P) Ltd. v. Hede& Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The complaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the complaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941).

23.13. If on a meaningful reading of the complaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the complaint, or after issuing summons to the defendant, or before conclusion of



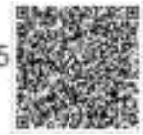
the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.”

5. Thus, in order to adjudicate upon the application filed under Order 7 Rule 11 CPC, the Court needs to peruse the plaint.

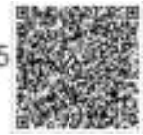
6. Plaintiff filed suit seeking declaration challenging sale deed bearing vasika No.23588 dated 03.03.2023 and further sought consequential relief of permanent and mandatory injunction. In sum and substance, case of the plaintiff is that she is a mother of serving Colonel in Indian Army. Her husband is a heart patient. Plaintiff entered into negotiations with the proforma defendants to purchase suit property.



Her son who is a serving Army Officer, in order to seek help contacted his school time friend who appears to be a practicing Architect. Defendant No.1 expressed his intent to be part of the deal. Plaintiff and defendant No.1 agreed to purchase the property jointly. Agreement to sell was executed in favour of both of them as a joint purchasers. It was the plaintiff who paid the entire earnest money as defendant No.1 availed housing loan to finance his part and NOC was executed by plaintiff as a joint owner for execution of sale deed in favour of defendant No.1. Plaintiff paid an amount of Rs. 2,43,44,000/- out of total sale consideration of Rs.4,86,88,000/-. It was agreed that MOU will be executed between both the parties wherein their share to the extent of 50% each will be defined. However, defendant No.1 clandestinely evaded execution of MOU and finally refused to sign the same. Plaintiff claims to have filed various police complaints against the fraud committed upon her by defendant No.1. Plaintiff claims to be in possession of the house since the execution of the sale deed. It is in these circumstances that the plaintiff filed suit seeking decree of permanent injunction and further declaration to the effect that she is co-owner to the extent of 50% in the suit property.

7. The petitioner-defendant claimed the suit to be barred under the provisions of Prohibition of Benami Property Transaction Act, 1988 relying upon Section 4 of the Act of 1998. The same reads as under:-

“4. Prohibition of the right to recover property held *benami*.—(1) No suit, claim or action to enforce any right in respect of any property held *benami* against the person in whose name the property is held or against any other person shall lie



by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.”

8. Petitioner claims that as per the averments made in the plaint, it is evident that the transaction is a benami transaction and the property is benami property and thus the suit filed by the plaintiff claiming her right in the same would be barred under Section 4 of the 1998 Act.

9. The issue that arises for the consideration of this Court is:

(i) Whether in terms of the plaint, transaction pleaded can be said to be benami transaction and the property subject matter of the same can be held to be benami property?

10. Benami property and benami transaction have been defined under Section 2(8) and 2(9) of the 1988 Act. The same read as under:-

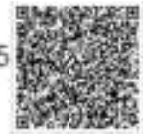
“2(8) “*benami* property” means any property which is the subject matter of a *benami* transaction and also includes the proceeds from such property;

(9) “*benami* transaction” means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct



or indirect, of the person who has provided the consideration,

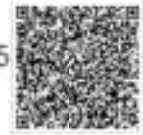
except when the property is held by—

(i) a *Karta*, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been



provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;”

11. For a transaction to be a benami transaction, a property should be transferred to or held by a person other than the one who pays the consideration for such property. The property so held should also be for immediate or future benefit, direct or indirect benefit of a person who has provided the consideration. The provision provides for exceptions thereto.

12. In the considered option of this Court, *prima facie* the case of the petitioner as pleaded in the plaint relates to exception (ii) as adumbrated under Section 2(9)(A)(b). The plaintiff in the plaint has filed suit claiming herself to be partner who has contributed to the extent of 50% in the purchase of the property. Thus, it is yet to be established during the course of trial by leading cogent evidence by both the parties whether the parties to the lis are partners as claimed in the plaint or not. Thus, at this stage to hold the transaction to be a benami transaction and thus the property to be benami property will neither be feasible nor desirable.

13. So far as bar with respect to provisions of the Income Tax is raised, counsel for the petitioner could not point out any provision under



the Income Tax that would bar the suit to hold that the objection can be relatable to the bars enumerated under Order 7 Rule 11 to reject the plaint.

14. After going through records of the case, this Court is satisfied that the plea raised in the application under Order 7 Rule 11 does not fall within the parameters of Order 7 Rule 11 of the Code of Civil Procedure. Thus, there is no legal infirmity or material irregularities in the order passed by the Trial Court that can persuade this Court to exercise revisional jurisdiction.

15. In view of above, the present petition is dismissed.

16. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

30.08.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes